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C O N F I D E N T I A L SECTION 01 OF 03 BRATISLAVA 000830

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SUBJECT: ANTI-REFORM JUSTICE MINISTER MAY BE DEMOTED TO
CONSTITUTIONAL COURT

Classified By: Ambassador Rodolphe M. Vallee for reasons 1.4 (b) and (d).

1. (C) SUMMARY. Slovakia's anti-reform Justice Minister Stefan Harabin will likely leave his current post to become a justice on the Constitutional Court. Nominated by HZDS, Harabin has proposed closing the Special Court for anti-corruption, forced a Judicial Council vote without providing documentation of the issues, and dismissed numerous regional court chiefs who were known for their pro-reform views. While, from one angle, a transfer to the Constitutional Court would be a demotion after a mere three months as Justice Minister, the 12-year appointment as a justice to that court would allow long-term influence by Harabin and presumably HZDS leader Meciar over certain judicial matters - and HZDS would still have the right to choose the replacement Justice Minister. One potential positive is that the Special Court and other Lipsic-era reforms may survive, although Prime Minister Fico has yet to take a position on the matter. END SUMMARY.

NOMINATION TO THE CONSTITUTIONAL COURT

2. (C) On October 9, Vladimir Meciar's Movement for a Democratic Slovakia (HZDS) nominated Minister of Justice Stefan Harabin to join the bench of the Constitutional Court, meaning that he would step down as Minister if approved for the new position. On October 11, the parliamentary Constitutional and Legal Affairs Committee interviewed Harabin for the post. According to Daniel Lipsic, a KDH (Christian Democratic Movement) MP and former Justice Minister who sits on the Committee, Harabin showed real interest in the Constitutional Court seat yet did not provide any meaningful answers to the Committee's questions. The media quoted Harabin as saying that he wasn't there to take an exam.

3. (U) The Constitutional Court decides cases in which the constitutionality of a law is called into question. Individual citizens may file a claim in the Constitutional Court on the grounds of a violation of civil or human rights by a government entity. The Constitutional Court is not an appeals court. (NOTE: The final appeals court in Slovakia is the Supreme Court. END NOTE.) Three seats on the 13-judge Constitutional Court are open this year and six more come up for reappointment next year. Three of the nine seats were vacated by judges who left to join European courts. Parliament will vote on a list of nominees for the Constitutional Court positions, from which President Gasparovic will appoint the new judges. Some of the nominees are existing Constitutional Court judges hoping for reappointment. The President also chooses, from among the judges on the bench, the Chair and Vice Chair of the Court. Harabin could therefore also become Chairman of the Constitutional Court.

4. (C) The announcement to nominate Harabin for the

Constitutional Court took the Slovak political scene by surprise. It's not yet known who the leading candidates are to replace Harabin as Justice Minister. One media report mentioned Kosice regional court judge Slavka Maruscakova, who had been short-listed by HZDS with Harabin the first time around. Lipsic's best guess was that a sitting judge or prosecutor will be named. At any rate, given the parceling-out of ministries based on agreement among the governing coalition, HZDS will retain the right to name the next Justice Minister, though Smer will have to consent.

SPECIAL COURT FOR ANTI-CORRUPTION

15. (SBU) In his three-month tenure as Justice Minister, Harabin has quickly developed a reputation as an anti-reformer. On September 28, he submitted a proposal to the Cabinet to close the Special Court for anti-corruption and organized crime. For now, the Cabinet is studying the proposal. Prime Minister Robert Fico has not given any opinion on the subject. In a letter to the President of the Special Court, Fico said only that such a move is appropriately within the sphere of the Justice Minister. Judges and prosecutors have informed Poloff that defendants in cases before the Special Court had started using delaying tactics from the moment Harabin first issued a public statement in August about the intended closure. Further delays, including a transfer of cases to the regular court system if the Special Court closes, could (but not necessarily) cause a release of suspects from detention in several notorious cases. Harabin has argued that the regional courts are capable of handling corruption cases.

16. (C) Harabin told the Ambassador in their September 14

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courtesy call that he was opposed to the court because the justices received a very high salary and had other perks, but did not hear as many cases (i.e., work as hard) as their colleagues in the regular courts. He said he would support the continued function of the special police units and the Special Prosecutor for corruption, but those cases would be heard in regular courts. The Special Court President told Poloffs that the Court is willing to accept an increased workload, modifications to its perks, or other measures in order to keep the Court open. The Special Prosecutor told Poloffs that the Court's completion rate, in one year of operation, for decisions without appeal is about 40 percent. Statistics from the Bratislava regional court in 2005, for example, show that approximately 25 percent of cases were decided while the rest remain pending. Former Justice Minister Lipsic points out that far fewer decisions from the Special Court are overturned than from district or regional courts.

17. (C) Lipsic believes that the regular courts could not effectively handle the cases that now go to the Special Court because the regular district and regional courts are too entrenched in the community. For example, when police go to a regular court for permission to wire-tap a suspected organized crime figure, that information is regularly leaked from somewhere within the regular court to the suspect, thereby compromising the investigation. The Special Court, located in Pezinok, is physically separated from the communities where the investigations take place to give the courts better protection from possible intimidation and to prevent leaks.

18. (U) The Special Court was formally established in September 2004 as a KDH reform measure against corruption. Lipsic was the driving force behind its creation during his tenure as Justice Minister. The Banska Bystrica regional court acted in the stead of the Special Court until the latter became operational in July 2005. The court hears cases of crimes committed by high ranking public officials in relation to their public offices and cases involving

corruption, organized crime, and crimes involving large property values. Judges are appointed by the Judicial Council, which is comprised of judges, lawyers, and representatives from the Ministry of Justice. Special Court decisions can be appealed to the Supreme Court.

STACKING THE DECK AGAINST THE SPECIAL COURT

¶9. (U) On October 3, ten of the 17 members of the Judicial Council, including all three from the Justice Ministry, voted in favor of the closing of the Special Court. Lipsic, who sits on the council, complained that the members did not receive any written documentation on the issue before the vote was held.

¶10. (U) Harabin has called for expert opinions on the Special Court from court councils, professional judicial organizations, law schools, and political party caucuses. The first roundtable discussion took place October 9 among MPs. HZDS and the Slovak National Party (SNS) favored the closure, while the three opposition parties opposed it. Smer, the leading party in the governing coalition, has not yet formed its position on the court.

¶11. (C) According to Lipsic, then member of parliament Robert Fico cooperated with KDH on corruption reform issues. Lipsic believes that some Smer MPs support the Special Court to the extent that they might cross the party line to vote against its closure should Smer officially side with Harabin on the matter. Lipsic speculates that Fico would rather keep his party together publicly and fight with Meciar behind the scenes. If this perspective is accurate, the Special Court would remain. However, Fico has not yet made a decision on the matter.

RECALL OF REFORM JUDGES

¶12. (SBU) In the first week of October, Harabin recalled seven regional court presidents. The dismissed judges have reputations as supporters of judicial reform and anti-corruption efforts and they are known to oppose Harabin's plan to close the Special Court. Harabin only has the authority to remove them from their administrative roles as presidents of the courts, and may only do so for just cause. The seven retain their positions as judges. Five of the seven are appealing their dismissal on the basis that Harabin did not give just cause.

COMMENT

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¶13. (C) HZDS and Harabin are putting a positive spin on Harabin's possible transfer to the Constitutional Court, citing the 12-year term of a Constitutional Court judge and Harabin's desire to return to the bench, but the move would be a demotion from being Justice Minister. With nine seats open now and in the near future, HZDS may be hoping to pack the court for the long-term. While the impact of HZDS candidates on the Constitutional Court could hurt anti-corruption efforts somewhat, this particular court has a limited scope, although it does theoretically have the ability to determine the constitutionality of the Special Court. The next HZDS Justice Minister, who will surely not be pro-reform, will likely be at least less visibly anti-reform given the quick removal of Harabin from office.

¶14. (C) Harabin's directives have been tailor-made to help silence opposition to his proposal to close the Special Court and give him the opportunity to replace reform-minded judges with his own supporters. Though he has never been a member of HZDS, his tactics harken to the style of the Meciar government in the 1990s. We have raised our concerns with

HZDS leaders (though not directly with Meciar) and have heard they are pleased with Harabin's initiatives, not surprisingly when several HZDS members are tied to cases pending before the Special Court. The only thing standing between Harabin and the closing of the Special Court is PM Fico, who has the ability and the authority to carry his party with him wherever he wants to go. Fico is in a hard spot: he depends on HZDS to keep his coalition in power and thus has to give in to Meciar at least sometimes. While the price so far are the judicial reforms and personnel changes, Harabin's overtly anti-reform measures may have gone too far too fast. With the removal of the biggest proponent for its closure, the Special Court has a chance to remain open, although perhaps with some modifications.

VALLEE